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11 INTERTRUST TECHNOLOGIES CORPORATION

12
13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16

17 INTERTRUST TECHNOLOGIES
CORPORATION,
18 a Delaware corporation,

19 Plaintiff,

20 v.

21 MICROSOFT CORPORATION, a
Washington corporation,

22 Defendant.
23

Case No. C 01 1640 JL

**SECOND AMENDED COMPLAINT FOR
INFRINGEMENT OF U.S. PATENT NOS.
6,185,683 B1 AND 6,253,193 B1; 5,920,861;
5,940, 504**

DEMAND FOR JURY TRIAL

24
25 Plaintiff INTERTRUST TECHNOLOGIES CORPORATION (hereafter "InterTrust")
26 hereby complains of Defendant MICROSOFT CORPORATION (hereafter "Microsoft"), and
27 alleges as follows:
28

JURISDICTION AND VENUE

1
2 1. This action for patent infringement arises under the patent laws of the United States,
3 Title 35, United States Code, more particularly 35 U.S.C. §§ 271 and 281.

4 2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

5 3. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(c) and 1400(b).

THE PARTIES

6
7 4. Plaintiff InterTrust is a Delaware corporation with its principal place of business
8 at 4750 Patrick Henry Drive, Santa Clara, California.

9 5. InterTrust is informed and believes, and on that basis alleges, that Defendant
10 Microsoft is a Washington Corporation with its principal place of business at One Microsoft
11 Way, Redmond, Washington.

12 6. InterTrust is informed and believes, and on that basis alleges, that Defendant
13 Microsoft does business in this judicial district and has committed and is continuing to commit
14 acts of infringement in this judicial district.

15 7. InterTrust is the owner of United States Patent No. 6,185,683 B1, entitled
16 "Trusted and secure techniques, systems and methods for item delivery and execution" ("the
17 '683 patent"), duly and lawfully issued on February 6, 2001. A copy of the '683 patent is
18 attached hereto as Exhibit A.

19 8. InterTrust is the owner of United States Patent No. 6,253,193 B1, entitled
20 "Systems and methods for secure transaction management and electronic rights protection" ("the
21 '193 patent"), duly and lawfully issued on June 26, 2001. A copy of the '193 patent is attached
22 hereto as Exhibit B.

23 9. InterTrust is the owner of United States Patent No. 5,940,504, entitled "Licensing
24 management system and method in which datagrams including an addressee of a licensee and
25 indicative of use of a licensed product are sent from the licensee's site" ("the '504 patent"), duly
26 and lawfully issued on August 17, 1999. A copy of the '504 patent is attached hereto as Exhibit
27 C.

28 10. InterTrust is the owner of United States Patent No. 5,920,861, entitled

1 "Techniques for defining, using and manipulating rights management data structures" ("the '861
2 patent"), duly and lawfully issued on July 6, 1999. A copy of the '861 patent is attached hereto
3 as Exhibit D.

4 **FIRST CLAIM FOR RELIEF**

5 11. InterTrust hereby incorporates by reference paragraphs 1-7 as if restated herein.
6 12. This is a claim for patent infringement under 35 U.S.C. §§ 271 and 281.
7 13. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
8 been and is infringing the '683 patent under § 271(a) by making and using systems incorporating
9 Windows Media Player Versions 7 and 8. In addition, on information and belief, InterTrust
10 alleges that Microsoft is making and using other systems and/or is in the process of developing
11 other systems, which infringe the '683 patent under § 271(a). InterTrust is further informed and
12 believes, and on that basis alleges, that Microsoft's infringement of the '683 patent under
13 §271(a) will continue unless enjoined by this Court.

14 14. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
15 been and is knowingly and intentionally inducing others to infringe directly the '683 patent under
16 § 271(a), thereby inducing infringement of the '683 patent under § 271(b). InterTrust is further
17 informed and believes that Microsoft's inducement has at least included the manner in which
18 Microsoft has promoted and marketed use of Windows Media Player Versions 7 and 8.
19 InterTrust is further informed and believes, and on that basis alleges, that Microsoft's
20 infringement of the '683 patent under §271(b) will continue unless enjoined by this Court.

21 15. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
22 been and is contributorily infringing the '683 patent under § 271(c) by providing digital rights
23 management software and related functions especially made or especially adapted for infringing
24 use and not staple articles or commodities of commerce suitable for substantial noninfringing
25 use, including at least Windows Media Player Versions 7 and 8. InterTrust is further informed
26 and believes, and on that basis alleges, that Microsoft's infringement of the '683 patent under
27 §271(c) will continue unless enjoined by this Court.

28 16. InterTrust is informed and believes, and on that basis alleges, that Microsoft is

1 willfully infringing the '683 patent in the manner described above in paragraphs 13 through 15,
2 and will continue to do so unless enjoined by this Court.

3 17. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
4 derived and received, and will continue to derive and receive from the aforesaid acts of
5 infringement gains, profits, and advantages, tangible and intangible, the extent of which are not
6 presently known to InterTrust. By reason of the aforesaid acts of infringement, InterTrust has
7 been, and will continue to be, irreparably harmed.

8 **SECOND CLAIM FOR RELIEF**

9 18. InterTrust hereby incorporates by reference paragraphs 1-6 and 8 as if restated
10 herein.

11 19. This is a claim for patent infringement under 35 U.S.C. §§ 271 and 281.

12 20. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
13 been and is infringing the '193 patent under § 271(a) by using Windows Media Player Versions
14 7 and 8. In addition, on information and belief, InterTrust alleges that Microsoft is making and
15 using other systems and/or is in the process of developing other systems, which infringe the '193
16 patent under § 271(a). InterTrust is further informed and believes, and on that basis alleges, that
17 Microsoft's infringement of the '193 patent under §271(a) will continue unless enjoined by this
18 Court.

19 21. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
20 been and is knowingly and intentionally inducing others to infringe directly the '193 patent under
21 § 271(a), thereby inducing infringement of the '683 patent under § 271(b). InterTrust is further
22 informed and believes that Microsoft's inducement has at least included the manner in which
23 Microsoft has promoted and marketed use of Windows Media Player Versions 7 and 8.
24 InterTrust is further informed and believes, and on that basis alleges, that Microsoft's
25 infringement of the '193 patent under §271(b) will continue unless enjoined by this Court.

26 22. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
27 been and is contributorily infringing the '193 patent under § 271(c) by providing digital rights
28 management software and related functions especially made or especially adapted for infringing

1 use and not staple articles or commodities of commerce suitable for substantial noninfringing
2 use, including at least Windows Media Player Versions 7 and 8. InterTrust is further informed
3 and believes, and on that basis alleges, that Microsoft's infringement of the '193 patent under
4 §271(c) will continue unless enjoined by this Court.

5 23. InterTrust is informed and believes, and on that basis alleges, that Microsoft is
6 willfully infringing the '193 patent in the manner described above in paragraphs 20 through 22,
7 and will continue to do so unless enjoined by this Court.

8 24. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
9 derived and received, and will continue to derive and receive from the aforesaid acts of
10 infringement gains, profits, and advantages, tangible and intangible, the extent of which are not
11 presently known to InterTrust. By reason of the aforesaid acts of infringement, InterTrust has
12 been, and will continue to be, irreparably harmed.

13 THIRD CLAIM FOR RELIEF

14 25. InterTrust hereby incorporates by reference paragraphs 1-6 and 9 as if restated
15 herein.

16 26. This is a claim for patent infringement under 35 U.S.C. §§ 271 and 281.

17 27. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
18 been and is infringing the '504 patent under § 271(a) by Microsoft's use of the Product
19 Activation feature of Microsoft XP and other Microsoft products. In addition, on information and
20 belief, InterTrust alleges that Microsoft is making and using other systems and/or is in the
21 process of developing other systems, which infringe the '504 patent under § 271(a). InterTrust is
22 further informed and believes, and on that basis alleges, that Microsoft's infringement of the
23 '504 patent under §271(a) will continue unless enjoined by this Court.

24 28. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
25 been and is knowingly and intentionally inducing others to infringe directly the '504 patent under
26 § 271(a), thereby inducing infringement of the '504 patent under § 271(b). InterTrust is further
27 informed and believes that Microsoft's inducement has at least included the manner in which
28 Microsoft has promoted and marketed use of the Product Activation feature of Windows XP and

1 other Microsoft products. InterTrust is further informed and believes, and on that basis alleges,
2 that Microsoft's infringement of the '504 patent under §271(b) will continue unless enjoined by
3 this Court.

4 29. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
5 been and is contributorily infringing the '504 patent under § 271(c) by providing digital rights
6 management software and related functions especially made or especially adapted for infringing
7 use and not staple articles or commodities of commerce suitable for substantial noninfringing
8 use, including the Product Activation feature of Windows XP and other Microsoft products.
9 InterTrust is further informed and believes, and on that basis alleges, that Microsoft's
10 infringement of the '504 patent under §271(c) will continue unless enjoined by this Court.

11 30. InterTrust is informed and believes, and on that basis alleges, that Microsoft is
12 willfully infringing the '504 patent in the manner described above in paragraphs 27 through 29,
13 and will continue to do so unless enjoined by this Court.

14 31. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
15 derived and received, and will continue to derive and receive from the aforesaid acts of
16 infringement gains, profits, and advantages, tangible and intangible, the extent of which are not
17 presently known to InterTrust. By reason of the aforesaid acts of infringement, InterTrust has
18 been, and will continue to be, irreparably harmed.

19 **FOURTH CLAIM FOR RELIEF**

20 32. InterTrust hereby incorporates by reference paragraphs 1-6 and 10 as if restated
21 herein.

22 33. This is a claim for patent infringement under 35 U.S.C. §§ 271 and 281.

23 34. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
24 been and is infringing the '861 patent under § 271(a) by making, using, selling, and offering for
25 sale digital rights management software incorporating inventions claimed in the '861 patent,
26 including but not limited to the Digital Asset Server and Microsoft Reader. In addition, on
27 information and belief, InterTrust alleges that Microsoft is making and using other systems
28 and/or is in the process of developing other systems, which infringe the '861 patent under §

1 271(a). InterTrust is further informed and believes, and on that basis alleges, that Microsoft's
2 infringement of the '861 patent under §271(a) will continue unless enjoined by this Court.

3 35. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
4 been and is knowingly and intentionally inducing others to infringe directly the '861 patent under
5 § 271(a), thereby inducing infringement of the '861 patent under § 271(b). InterTrust is further
6 informed and believes that Microsoft's inducement has at least included the manner in which
7 Microsoft has promoted and marketed use of Digital Asset Server and Microsoft Reader.
8 InterTrust is further informed and believes, and on that basis alleges, that Microsoft's
9 infringement of the '861 patent under §271(b) will continue unless enjoined by this Court.

10 36. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
11 been and is contributorily infringing the '861 patent under § 271(c) by providing digital rights
12 management software and related functions especially made or especially adapted for infringing
13 use and not staple articles or commodities of commerce suitable for substantial noninfringing
14 use, including but not limited to the Digital Asset Server and Microsoft Reader. InterTrust is
15 further informed and believes, and on that basis alleges, that Microsoft's infringement of the
16 '861 patent under §271(c) will continue unless enjoined by this Court.

17 37. InterTrust is informed and believes, and on that basis alleges, that Microsoft is
18 willfully infringing the '861 patent in the manner described above in paragraphs 32 through 34,
19 and will continue to do so unless enjoined by this Court.

20 38. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
21 derived and received, and will continue to derive and receive from the aforesaid acts of
22 infringement gains, profits, and advantages, tangible and intangible, the extent of which are not
23 presently known to InterTrust. By reason of the aforesaid acts of infringement, InterTrust has
24 been, and will continue to be, irreparably harmed.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, InterTrust prays for relief as follows:

27 A. That Microsoft be adjudged to have infringed the '683 patent under 35 U.S.C. §
28 271(a);

- 1 B. That Microsoft be adjudged to have infringed the '683 patent under 35 U.S.C. §
2 271(b) by inducing others to infringe directly the '683 patent under 35 U.S.C. § 271(a);
- 3 C. That Microsoft be adjudged to have contributorily infringed the '683 patent under
4 35 U.S.C. § 271(c);
- 5 D. That Microsoft be adjudged to have willfully infringed the '683 patent under 35
6 U.S.C. §§ 271(a), (b), and (c);
- 7 E. That Microsoft, its officers, agents, servants, employees and attorneys, and those
8 persons in active concert or participation with them be preliminarily and permanently restrained
9 and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing the '683 patent;
- 10 F. That Microsoft be adjudged to have infringed the '193 patent under 35 U.S.C. §
11 271(a);
- 12 G. That Microsoft be adjudged to have infringed the '193 patent under 35 U.S.C. §
13 271(b) by inducing others to infringe directly the '193 patent under 35 U.S.C. § 271(a);
- 14 H. That Microsoft be adjudged to have contributorily infringed the '193 patent under
15 35 U.S.C. § 271(c);
- 16 I. That Microsoft be adjudged to have willfully infringed the '193 patent under 35
17 U.S.C. §§ 271(a), (b), and (c);
- 18 J. That Microsoft, its officers, agents, servants, employees and attorneys, and those
19 persons in active concert or participation with them be preliminarily and permanently restrained
20 and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing the '193 patent;
- 21 K. That Microsoft be adjudged to have infringed the '504 patent under 35 U.S.C. §
22 271(a);
- 23 L. That Microsoft be adjudged to have infringed the '504 patent under 35 U.S.C. §
24 271(b) by inducing others to infringe directly the '504 patent under 35 U.S.C. § 271(a);
- 25 M. That Microsoft be adjudged to have contributorily infringed the '504 patent under
26 35 U.S.C. § 271(c);
- 27 N. That Microsoft be adjudged to have willfully infringed the '504 patent under 35
28 U.S.C. §§ 271(a), (b), and (c);

1 O. That Microsoft, its officers, agents, servants, employees and attorneys, and those
2 persons in active concert or participation with them be preliminarily and permanently restrained
3 and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing the '504 patent;

4 P. That this Court award damages to compensate InterTrust for Microsoft's
5 infringement, as well as enhanced damages, pursuant to 35 U.S.C. § 284;

6 Q. That this Court adjudge this case to be exceptional and award reasonable
7 attorney's fees to InterTrust pursuant to 35 U.S.C. § 285;

8 R. That Microsoft be adjudged to have infringed the '861 patent under 35 U.S.C. §
9 271(a);

10 S. That Microsoft be adjudged to have infringed the '861 patent under 35 U.S.C. §
11 271(b) by inducing others to infringe directly the '861 patent under 35 U.S.C. § 271(a);

12 T. That Microsoft be adjudged to have contributorily infringed the '861 patent under
13 35 U.S.C. § 271(c);

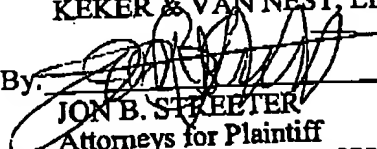
14 U. That Microsoft be adjudged to have willfully infringed the '861 patent under 35
15 U.S.C. §§ 271(a), (b), and (c);

16 V. That Microsoft, its officers, agents, servants, employees and attorneys, and those
17 persons in active concert or participation with them be preliminarily and permanently restrained
18 and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing the '861 patent;

19 W. That this Court assess pre-judgment and post-judgment interest and costs against
20 Microsoft, and award such interest and costs to InterTrust, pursuant to 35 U.S.C. § 284; and

21 X. That InterTrust have such other and further relief as the Court may deem proper.

22 Dated: July 25, 2001

KEKER & VAN NEST, LLP
By: 
JON B. STEETER
Attorneys for Plaintiff
INTERTRUST TECHNOLOGIES
CORPORATION

DEMAND FOR JURY TRIAL

Plaintiff InterTrust hereby demands a trial by jury as to all issues triable by jury, specifically including, but not limited to, the issue of infringement of United States Patent Nos. 6,185,683 B1; 6,253,193 B1; 5,940,504; and 5,920,861.

Dated: July 25, 2001

KEKER & VAN NEST, LLP

By: 

JON B. STREETER
Attorneys for Plaintiff
INTERTRUST TECHNOLOGIES
CORPORATION

PROOF OF SERVICE

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Keker & Van Nest, LLP, 710 Sansome Street, San Francisco, California 94111.

On July 26, 2001, I served the following document(s):

**SECOND AMENDED COMPLAINT FOR INFRINGEMENT OF U.S. PATENT NOS.
6,185,683 B1 AND 6,253,193 B1; 5,920,861; 5,940, 504**

- ☒ by COURIER, by placing a true and correct copy in a sealed envelope addressed as shown below, and dispatching a messenger from FIRST LEGAL with instructions to hand-carry the above and make delivery to the following during normal business hours, by leaving a true copy thereof with the person whose name is shown or the person authorized to accept courier deliveries on behalf of the addressee.


Eric L. Wesenberg, Esq.
Mark R. Weinstein, Esq.
Orrick, Herrington & Sutcliffe LLP
1000 Marsh Road
Menlo Park, CA 94015

- ☒ by FEDERAL EXPRESS, by placing a true and correct copy in a sealed envelope addressed as shown below. I am readily familiar with the practice of Keker & Van Nest, LLP for correspondence for delivery by FedEx Corporation. According to that practice, items are retrieved daily by a FedEx Corporation employee for overnight delivery.

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One World Trade Center, Suite 1600
121 S.W. Salmon Street
Portland, OR 97204

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 26, 2001, at San Francisco, California.


MARIA LI MANGIAPANE